IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

DAMIEON RASPBERRY)	
-4.4.40)	
Plaintiff,)	
)	
V.)	No.: 1:12-cv-01209-JDT-egb
)	
KENNETH THOMPSON)	
)	
Defendant)	

REPORT AND RECOMMENDATION

Plaintiff filed a pro se complaint on September 14, 2012, and filed a motion to proceed *in forma pauperis*, which was granted on September 19, 2012. He has now filed a motion for entry of default [D.E. 19] The undersigned recommends that this motion be denied.

There is a strong public policy, supported by the concept of fundamental fairness, in favor of trial on the merits. *See* <u>United Coin Meter Co., Inc., v. Seaboard Coastline RR.</u>, 705

F.2d 839, 846 (6th Cir. 1983). *See also* <u>Swink v. City of Pagedale</u>, 810 F.2d 791 (8th Cir.1987), cert. denied, 483 U.S. 1025 (1987); <u>Jackson v. Beech</u>, 636 F.2d 831(D.C. Cir.1980). As a consequence, judgment by default is a "drastic remedy" which should be used only in "extreme situations." <u>10 Charles Alan Wright</u>, <u>Arthur R. Miller & Mary Kay Kane</u>, <u>Federal Practice and Procedure: Civil 2d, § 2693</u>; <u>Flaksa v. Little River Marine Construction Co.</u>, 389 F.2d 885 (5th Cir.1968), cert. denied, 392 U.S. 928 (1968).

Consequently, when a defendant appears and indicates a desire to contest an action, a court may refuse to grant a default judgment, in accordance with the policy of allowing cases to be tried on the merits. 10 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d,

supra. Default judgments are not favored and are appropriate only when there has been a "clear record of delay or contumacious conduct." <u>Id</u>. (citing <u>United States on Behalf of and for the Use</u> of Time Equipment Rental & Sales, Inc. v. Harre, 983 F.2d 128 (8th Cir.1993)).

In the present case, Counsel for Defendant Kenneth Thompson has filed a notice of appearance [D.E. 20]. Additionally, the Court granted the motion of the defendant for a thirty day extension of time in which to file an answer or otherwise plead on November 29, 2013. Clearly, Defendant have shown a desire to contest the action. Consequently, it is the recommendation of the Magistrate Judge that Plaintiff's motion be denied.

Respectfully Submitted,

s/Edward G. Bryant

EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **October 30, 2013**

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.